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March 18, 1994
(correction of report dated March 17, 1994)

Via Hand-Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: ET Docket No. 93-7; Report of Ex Parte Discussions

Dear Mr. Caton:

On Wednesday, March 16, 1994, representatives of Philips Consumer Electronics Company, Thomson Consumer Electronics, and Zenith Electronics Corporation met with Commission officials to discuss the above-referenced proceeding. The industry representatives participating in the meeting were Joe Clayton, Executive Vice President, Marketing and Sales, Americas and Asia, Thomson; Ron Marsiglio, Senior Vice President and General Manager, Color TV, Philips; and Al Moschner, President and Chief Operating Officer, Zenith. They were accompanied by George Hanover and Barbara McLennan, Vice Presidents (for Engineering and for Government and Legal Affairs, respectively) of the Consumer Electronics Group of the Electronic Industries Association, and the undersigned. The meetings were held, in turn, with Brian Fontes, Senior Advisor to Commissioner Quello; Lisa Smith, Legal Advisor to Commissioner Barrett; and Chairman Reed Hundt and his Special Assistant, Merrill Spiegel.

The positions presented during the meeting are reflected in the attached summary. The two attached excerpts from the Congressional Record were also distributed. The industry representatives described the receiver design changes necessary to qualify products to be marketed as "cable-ready," expressed their expectation that these products would be widely available to consumers, and urged that consumers continue to have the opportunity to procure receivers which do not bear the added costs of cable-ready products (or which include some, but not all, of the attributes of cable-ready receivers). They warned that consumers who choose to

purchase cable-ready receivers (which may cost on the order of an additional $50 at retail) will be unhappy if they continue to be compelled to rent cable-company-provided set-top boxes because signals are being delivered in a form that is incompatible with the Decoder Interface.

Another topic of discussion was the state of joint industry standards development, including development of specifications for the Decoder Interface. It was suggested that reports of a breakdown in discussions are overstated, that progress is not always continuous, that there is good reason to hope that the necessary tasks can be completed in a timely manner, and that the likelihood of success could be further enhanced by the right kind of encouragement from the Commission to the handful of recalcitrant cable companies which have sought to undermine joint standards development efforts or otherwise challenged the compromise proposals presented by the Advisory Group in July 1993.

Finally, the industry representatives explained that standards can promote innovation and competition. For example, they discussed how the NTSC television broadcast standard has evolved to include color, then stereo sound, and then captioning. They emphasized the importance of the cable industry's commitment to cooperate in the timely development of standards for the digital environment. And they stressed the need for a standardized, open, conditional access interface to prevent the anticompetitive effects of proprietary scrambling systems.

This letter and the extra copy of this letter are being transmitted in accordance with Section 1.206(a) of the Commission's rules. Please let me know if you have any questions.

Sincerely,

James L. Casserly

Enclosures

cc: The Honorable Reed Hundt
Bruce Franca
Lisa Smith
Merrill Spiegel

THE CONSUMER ELECTRONICS INDUSTRY PLEDGES ITS CONTINUING COOPERATION IN EFFORTS TO RESOLVE CABLE COMPATIBILITY PROBLEMS.

Consumer electronics companies have been responsive to the desires of policymakers:

- The consumer electronics industry helped to draft the legislation for Senator Leahy and actively supported its enactment into law.
- The industry has cooperated with the cable industry through the Cable-Consumer Electronics Compatibility Advisory Group and the Joint Engineering Committee.
- The consumer electronics industry's position -- with its emphasis on user-friendly operation and maximum functionalities in the competitive domain -- is closely aligned with the views expressed by consumer groups and retail organizations.

Considerable progress has been made:

- Short-term solutions have been developed to provide interim relief.
- Over the longer term, more fundamental changes are needed to restore the functionality of consumer electronics products and to spare consumers the costs and complications of set-top boxes.
- Many of the necessary steps are reflected in joint recommendations filed by both industries last summer. The Notice of Proposed Rulemaking is, for the most part, consistent with these recommendations. A Supplemental Notice of Proposed Rulemaking, in addition to a Report and Order, will maintain the momentum.

THREE KEY ISSUES WARRANT SPECIAL EMPHASIS AT THIS TIME

Cable-Ready Sets:

- The two industries have worked out rigorous technical specifications for all receivers marketed as "cable-ready."
- It is imperative that these rules not be applied to receivers that are not marketed as cable-ready.
- To limit the availability of today's receivers would constrict consumer choice and increase costs.

Decoder Interface:

- The Decoder Interface must be designed to allow for innovation and technological evolution.
- All cable services must be compatible with the Decoder Interface, or consumers will continue to be saddled with the costs, inconveniences, and compatibility problems resulting from set-top boxes.

Digital Standards:

- The foundation of the compromise between the cable and consumer electronics industries was the cable industry's commitment to cooperate in the development of digital standards. The Commission should ensure that this commitment is honored.
- Open digital standards, based on the Grand Alliance HDTV standard, will accelerate progress, ensure compatibility, and minimize costs.
- The architecture should include a standardized, open, conditional access interface to prevent the anticompetitive effects of proprietary scrambling systems.

damages for intentional discrimination, but women, religious minorities, and the disabled could not.

The Civil Rights Act of 1991 creates an important new remedy for women, religious minorities, and the disabled. But tragically, the inequity I have just described remains true today. The act does allow victims of intentional discrimination to recover compensatory and punitive damages, but this recovery is subject to monetary limitations—$50,000, $100,000, $200,000, and $300,000—that vary with the size of the employer. Out-of-pocket compensatory damages are not subject to these limitations. Thus, it is still the case that racial minorities may recover unlimited punitive and compensatory damages for intentional discrimination, but women, religious minorities, and the disabled may not.

This inequity has a tremendous practical effect on the disadvantaged groups. First, because compensatory damages are designed to make an individual whole for all losses they have suffered, it is completely inappropriate to place a monetary limitation on the amount that individual can recover. Victims of intentional harassment and discrimination often suffer severe physical and mental injuries as a consequence. The harms suffered by these victims are not capped in any way, and the remedies available to them should not be limited either.

Second, punitive damages are designed to punish employers who have acted with malice or with reckless indifference to the victim's rights. To ensure that the amount awarded deters the employer from future violations, juries are instructed to consider all relevant circumstances, including the employer's net worth. The Civil Rights Act of 1991 limits the amount of damages that may be awarded, based on the number of employees an employer has. While that number may roughly correspond to the employer's net worth in some instances, size is by no means a proxy for wealth. Moreover, these limitations apply to smaller employers who intentionally discriminate no matter how egregious their conduct. As a consequence, some may escape with only a monetary slap on the wrist that does not serve as a deterrent to future violations.

The legislation we are introducing today performs a quick and simple surgery on the damages provision established by the Civil Rights Act of 1991. It eliminates the monetary limitations described above, to ensure that the Federal Government treats all forms of intentional discrimination equally. I am proud to join with Senators KENNEDY, MIKULSKI, WIRTH, DURENBERGER, and the other original cosponsors in offering this legislation.

Up to now, the very statutes designed to ensure equality of opportunity for all Americans themselves have contained provisions which discriminate against women, religious minorities, and the disabled in terms of the remedies they may recover. Let us move swiftly to remove this inequity from Federal law. I can think of no reason to oppose this legislation, except for a willingness to let women, religious minorities, and the disabled be treated as second-class workers. I certainly hope no one will do so.

Mr. WELLSTONE. Mr. President, today we introduce the Equal Remedies Act of 1991—an act which rectifies a serious inequity created by the Civil Rights Act which was enacted by Congress this fall.

Under the Civil Rights Act which we recently passed, victims of intentional discrimination based on sex, religion, or disability in the workplace will be able to sue under the Federal civil rights laws for the first time. This was a giant step forward in the granting of equal civil rights to all Americans, and toward the elimination of the cancer of discrimination in our society.

That act, however, went only part of the way. While it established a remedy for victims of sex, religious, and disabled status discrimination, it also set a cap—an upward limit—on the amount of damages that the victims of these kinds of discrimination could receive. Although victims of racial discrimination are now able to receive unlimited damages to redress the violations of their civil rights, victims of discrimination on the basis of sex, religion, or disabled status are not.

I know of no legitimate reason—indeed, none has ever been advanced—that justifies this difference in treatment. Illegal discrimination of any kind wounds its victims. Illegal discrimination of any kind diminishes us as a society and as a Nation. We cannot say that one kind of discrimination is better or less reprehensible than another: that the legal remedies for one kind of discrimination will be limited, while the remedies for another will not. The existence of a two-tier system of remedies says to the victims of sex, religious, and disability status discrimination that what they have suffered is of lesser importance; it says to the perpetrators of this discrimination that the law has greater tolerance for their conduct. Neither is true. Both messages of the prior Civil Rights Act must be eradicated.

The section on damages in the Civil Rights Act represented a compromise necessitated by concern about passing a bill which would be signed by the President. Now that this step has been taken, we need to take the next step: The elimination of a damage scheme that itself discriminates against victims of employment discrimination. I believe that Americans believe in fairness and equality. I believe that the U.S. Senate remains committed to fairness and equality. By enacting this legislation, we will be finally completing the eradication of this last vestige of invidious discrimination in the civil rights laws.

By Mr. LEAHY:

S. 2063. A bill to amend the Communications Act of 1934 to require cable television operators to provide notice and options to consumers regarding the use of converter boxes, remote control devices, and multiport technology; to the Committee on Commerce, Science, and Transportation.

CABLE TELEVISION LEGISLATION

Mr. LEAHY. Mr. President, there is a concern I have, and I suspect it is one probably shared by many of those who are watching C-SPAN, or watching these proceedings, and that is the problem of cable television.

My home in Vermont is blessed by the fact that it is so far out in the country, and the houses are about a mile or so apart and you do not have cable television. In fact, we practically have no television. I think we get 1 or 2 channels: one sort of comes in, and other comes in not too bad in the picture, but poor in the content.

I constantly run into people who tell me about the problems with cable television. It was not until I decided, in the home that I use during the week here in the Washington area, to put in cable television that I found out why people complain so about cable. In the rural independent part of the country that I am from, maybe it is just as well they do not have this type of TV. It would probably spark a revolution of people marching on cable headquarters.

So, Mr. President, I rise today to speak about Cable TV, an issue which has the American people fed up, out of patience and ready for action. They are tired of rising prices and dismal service, tired of being charged for channels they never ordered, converter boxes they do not want and remote control units they are forced to rent, tired of being a captive audience for cable operators and tired of too little action from Congress and the President.

THE CABLE MONOPOLY

Meanwhile, politicians, bureaucrats, and lobbyists here in Washington show an amazing ability to stay behind the curve. Last March, a panel of leading industry lights argued at a Senate hearing that cable is not a monopoly because people have other alternatives—such as watching over the air stations, or home videos or driving off to a ball game, instead of watching it in their living room. This makes about as much sense as saying that old Ma Bell was not a monopoly because people could write letters or send telegrams. Settling for a handful of over the air stations or renting a movie is no substitute for the 30, or 50, or 80 channels available on cable.

Meanwhile, our Federal watchdog agency, the FCC, after lengthy bureaucratic review, concluded in July that cable operators face effective competition if there are six over the air stations in their area. This decision was apparently considered a great advance over the old rule which said that

three over-the-air channels amounted to meaningful competition.

All I can say about that is: Guys, you just do not get it. The bureaucrats and experts in Washington can debate the antitrust laws until the cows come home and try to convince each other that cable is not a monopoly, but the American people know better. Any consumer from Burlington, VT, to San Francisco can tell you that if you want to get a full slate of programming, you will probably have to deal with the local cable company. If that is not a monopoly, I do not know what is.

Moreover, cable is an unregulated monopoly. In 1984, Congress stepped in and freed cable from much regulation. In fact, basic cable rates were supposed to be regulated wherever cable faced no effective competition. But when the FCC waved its wand and declared—contrary to simple common sense—that virtually all cable operators did face competition, the operators were off to the races.

From November 1986 to April 1991, basic rates shot up by 56 percent. In a similar period in my own State of Vermont, prices rose 48 percent. And those are just averages. We have all heard the horror stories about truly astronomical increases—of 130 percent in Newark; 186 percent in Jefferson City, MO; and 222 percent in one Connecticut town because of the monopoly. Meanwhile, the unprotected victims of this price-gouging have no recourse.

As cable revenues soared, the industry took aggressive steps to consolidate its position, buying up programmers and preventing potential competitors like satellite or wireless cable from gaining access to key programming. When, for example, cable operators deny competitors access to prime attractions like TNT, with its NBA and NFL broadcasts, what they are doing is making the world safe for monopoly.

And unsafe for consumers. As long as companies face real competition, customers are well served. But if the customer is captive, business' natural impulse to maximize profits means rising prices and declining service. That is why anyone who thinks that cable or any other monopoly can effectively police itself is dreaming.

Of course, in a sense, cable has become a victim of its own success. The programming that cable and its newer competitors like satellite and wireless deliver has increasingly become a fixture in American households. If you want to see news around the clock on CNN; if you want to see public affairs programming on C-SPAN; if you want to see first-run movies or a full menu of college and professional sports, you cannot rely on your old antenna. The days when people were satisfied with a handful of broadcast stations are over. But the more that people come to rely on cable programming, the more that cable's monopoly status becomes intolerable.

THE COMPREHENSIVE CABLE BILL—S. 12

A number of my colleagues, including Senators HOLLINGS, INOUYE, GORE, METZENBAUM, LIEBERMAN, and DANFORTH have been wrestling with the cable issue for a long time and I commend their efforts in doing that. In essence, S. 12 establishes a temporary regulatory scheme while encouraging the growth of a competitive environment that will allow regulation to be phased out.

On the regulatory front, S. 12 requires that cable rates be reasonable and establishes standards for adequate service.

On the competitive front, S. 12 bars any programmer that owns or is owned by a cable operator from unreasonably refusing to deal with competitors like satellite and wireless or from discriminating against them in the price or terms of sale, if such discrimination damages local competition. I think that these nondiscrimination provisions could be still tougher, but they are an important step in the right direction.

I so have some concern about the copyright implications of the bill's new provisions on retransmission consent, and I plan to review those provisions carefully. But, on the whole, I think the approach of S. 12 is right on target.

The cable monopoly, of course, wants to continue to have its cake and eat it too. Cable operators oppose regulation on the ground that the free market should be left to work its will, but oppose the very measures—open access to programming—that would allow the free market to work. They talk about letting the free market in, but they make darn sure the free market does not come in.

The truth is that, when it comes to exclusive program deals, the cable industry has a lousy memory. In 1976, when the networks dominated and cable was a fledgling upstart, Congress granted cable a compulsory license so that cable would have full access to broadcast programming and could compete effectively. Now that the shoe is on the other foot, cable insists on its God-given right to tie up programming with exclusive contracts.

It may be that cable operators should not have been allowed to integrate vertically in the first place. If cable systems and cable programmers had remained in separate hands, many of the anticompetitive problems we face now could have been avoided. But given the vertically integrated world we live in now, with most top programmers owned by cable operators, the least we can do is demand that cable's competitors have access to programming on fair terms. To do less is to consign those competitors to defeat and America's consumers to the whims of monopoly power.

CABLE EQUIPMENT BILL

The bill I am introducing today—the Cable Ready Equipment Act of 1991—is aimed at a problem that more and more cable customers are confronting, to their dismay: Namely, that the converter boxes many are required to use disable important features of their cable ready TV's and VCR's.

How many people, Mr. President, have come to you, as they have to me, and said they have cable but then are told to get a converter box. They have to rent the converter box. How many of these people come in and say, "Hey, I got cable, but the cable company told me, 'Well, now you have to rent a converter box from us.'"

And why do you have to rent the converter box? Does it give you a better picture? Usually not. If anything, it usually degrades the picture. Why do you have to do it? If you do take this converter box that they tell you you need, then the TV remote control unit that you bought with your television becomes worthless. That box also makes it impossible to watch one channel while you tape another or to tape consecutive programs on different channels.

And if your new TV includes special features like a picture-in-a-picture display that lets you simultaneously check out a second channel while watching something else—forget it. The converter box prevents that feature from working—this converter box which you were required by your cable company to take apparently for no other reason than the fact that they make money on it.

My bill would do a number of things to make cable equipment more user-friendly:

First, it would encourage cable systems to use methods of signal denial—such as trapping or interdiction—which do not require a converter box in the first place. Because it is more and more evident to me that the main reason for converter boxes is that cable companies can charge for them. The fact that you bought a whole lot of equipment that you are not going to be able to use is immaterial to them as long as they are making money. The heck with whatever inconvenience it causes you.

Second, my bill would forbid cable operators from scrambling those channels offered on basic cable service.

Third, it would require cable operators to offer subscribers the option of receiving their unscrambled channels by direct hookup to their television, eliminating the converter box as to all such stations.

Fourth, cable operators would have to offer subscribers the option of purchasing a remote control device from any source rather than having to rent it from the cable operator.

Finally, it would direct the FCC to establish regulations phasing in a new technology called mutiport, which can decode scrambled signals without disabling any features of either a cable ready TV or VCR.

If we lived in a real competitive cable world, this legislation would be unnecessary.

Can you imagine if you had two cable companies, one which said, "Well, you have to rent all this extra equipment of ours, you have to buy this or rent that, you have to set up all this stuff on your television—granted, it will not allow you to use any of the special features of your TV, but we are going to make money out of it"; and right in that same town another cable company that said, "Hey, same price, we will let you just hook right up to your TV, you will not have to rent extra equipment from us; you won't have to have a half dozen remote controls and so on." Which cable company do you think you would buy service from?

If there were real competition, nobody would put up with the kind of baloney that they put us through.

Enterprising companies would have seized the opportunity to offer consumers user-friendly service that allowed full use of their TV's and VCR's. But in a monopolistic world, which we have in the cable industry, consumers need help and this bill is designed to provide it. This is highly technical legislation, and I look forward to working on it with interested and knowledgeable parties in this country and within the Senate.

SATELLITE HOME VIEWER ACT—STANDING

My second bill—which I introduced Thursday—is intended to help reduce the amount that home dishowners have to pay for programming. Congressman BOUCHER has introduced companion legislation in the House. As an FCC study concluded in July, satellite carriers that uplink and downlink superstations and network affiliates routinely charge satellite distributors, who sell programming to dishowners, far more—sometimes several times more—than they charge cable operators. This price discrimination against satellite distributors in turn drives up the price that home dishowners have to pay.

That kind of price discrimination is clearly illegal under the Satellite Home Viewer Act of 1988. The problem is that the distributors have no standing to sue to enforce their rights.

My bill—the Satellite Home Viewer Act Amendments of 1991—will correct this anomaly by making clear that satellite distributors have such standing.

Mr. President, Congress cannot continue to ignore the growing problems in the cable industry. I fully agree that competition is the best way to protect consumers, but until consumers have genuine competitive options and are free from monopoly abuse, regulation will be necessary. Moreover, unless monopoly power is restrained by legislation, new competitors like satellite and wireless will die on the vine.

In this regard, I also want to register my concern over the proposed rule announced in July by the Copyright Office—a rule which would doom wireless cable by denying it the all important benefits of the cable compulsory license. Competition to cable should be the order of the day. The last thing we need is to squeeze the life out of a potential competitor.

Mr. President, I look forward to the debate on comprehensive cable legislation early next year. Cable's captive audience is restless and it has a right to demand better treatment. It is up to the Congress and the White House to deliver.

I ask unanimous consent that the full text of my cable equipment bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE READY EQUIPMENT.

The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"SEC. 624A. NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE READY EQUIPMENT.

"(a) SHORT TITLE.—This section may be cited as the Cable Ready Equipment Act of 1991".

"(b) FINDINGS.—The Congress finds that—

"(1) the use of converter boxes to receive cable television may disable certain features of cable ready televisions and VCRs, including, for example, the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain special features of a television such as a 'picture in a picture' feature; and

"(2) cable operators should, to the fullest extent possible, employ technology that allows cable television subscribers to enjoy the full benefit of the features available on cable ready televisions and VCRs.

"(c) DEFINITIONS.—As used in this section:

"(1) The term 'cable ready', when used to describe a television or VCR, means that the television or VCR is equipped with adequate channel capacity to receive the service offered by cable operators without the use of a converter box, except insofar as a converter box is needed to decode scrambled signals.

"(2) The term 'Commission' means the Federal Communications Commission.

"(3) The term 'converter box' means a device that—

"(A) allows televisions that are not cable ready to receive the service offered by cable operators; and

"(B) decodes signals that cable operators deliver to subscribers in scrambled form.

"(4) The term 'multiport' means an apparatus that is built into a television according to the EIA/ANSI 563 standard, or any successor standard accepted by the Commission, into which is fitted a cable system decoder that performs only a descrambling function, while other functions, such as tuning and remote control, are carried out by the television.

"(5) The term 'VCR' means a videocassette recorder.

"(d) SCRAMBLED SIGNALS.—Cable operators shall not scramble or otherwise encrypt any signal that is offered as part of basic cable service, as that term is defined in section 602(2).

"(e) CONVERTER BOXES.—Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations requiring a cable operator offering channels the reception of which requires a converter box to—

"(1) notify a subscriber that if a subscriber's cable service is delivered through a converter box, rather than delivered directly to the subscriber's cable ready television or VCR, the subscriber may be unable to enjoy certain features of his television or VCR, including the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain special features of the subscriber's television such as a picture in a picture feature;

"(2) offer any subscriber with a cable ready television who does not receive channels the reception of which requires a converter box, the option of having his cable service installed, or reinstalled, at the cable operator's expense, by direct hookup to the subscriber's television or VCR; and

"(3) offer any subscriber with a cable ready television who receives or wishes to receive channels the reception of which requires a converter box, the option of having his cable service installed, or reinstalled, at the cable operator's expense, in such a way that those channels whose reception does not require a converter box are delivered directly to the subscriber's television or VCR.

"(f) REMOTE CONTROL DEVICES.—Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the use of remote-control devices that shall—

"(1) require a cable operator who offers subscribers the option of renting a remote control unit—

"(A) to notify subscribers that they may purchase from any source a remote control device rather than renting it; and

"(B) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(2) prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(g) MULTIPORT TECHNOLOGY.—Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the installation of multiport technology on new televisions and the supplying by cable operators of descrambling units that are compatible with such technology. Such regulations shall require that—

"(1) all televisions with a picture screen of 13 inches or greater in size sold in the United States on or after the earliest feasible date to be fixed by the Commission shall be equipped with multiport technology;

"(2) no later than the date fixed by the Commission in paragraph (1), a cable operator who provides channels the reception of which requires the use of a converter box shall, for a subscriber who receives or wishes to receive such channels and who owns a cable ready television equipped with multiport technology, offer to replace any converter box at the cable operator's ex

pense, with a descrambling unit that is compatible with the multiport technology; and

"(3) an offer made pursuant to paragraph (2) to replace a converter box with a descrambling unit shall fully inform the subscriber that the use of the descrambling unit will enable the subscriber to enjoy features available on a cable ready television and any VCR that is connected to the television.".

By Mr. HATFIELD (for himself, Mr. MITCHELL, Mr. SIMON, Mr. JEFFORDS, Mr. DECONCINI, Mr. LEAHY, Mr. ADAMS, Mr. HARKIN, Mr. KENNEDY, and Mr. WELLSTONE):

S. 2064. A bill to impose a 1-year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period; to the Committee on Foreign Relations.

NUCLEAR TESTING MORATORIUM ACT

Mr. HATFIELD. Mr. President, in a just a few days I will be leaving for Pearl Harbor with a delegation taking part in the ceremonies commemorating the 50th anniversary of the Japanese attack on the Pacific fleet. Recorded history refers to December 7, 1941, as a day which will live in infamy.

Mr. President, for myself and many others, Pearl Harbor's shock and tragedy is matched by few horrors, but certainly by the atomic blasts at Hiroshima and Nagasaki. As a young naval officer who viewed Hiroshima only days after the bomb was dropped I saw firsthand the terrible power of nuclear weapons.

Since World War II the United States and the Soviet Union engaged themselves in the task of perfecting the atom, creating tactical and strategic weaponry which could be flexible enough to use in any military situation. Yet, at the same time the superpowers have sought to suppress the possession of nuclear capabilities by other countries. That goal largely has been met. And just as the United States' relationship with Japan since Pearl Harbor has been completely and permanently transformed, so has our own need for nuclear weapons. The problem is that some within the Pentagon are not yet ready to admit that fact.

Today, I am pleased to announce that Senator MITCHELL and I, along with several other Senators, are offering legislation which will place the United States in a leadership position with respect to nuclear testing. Our bill calls for a 1-year, bilateral moratorium on such tests, so long as the Soviets are adhering to their decision to suspend tests. Now, more than ever, a nuclear test ban makes sense and I commit myself today to the effort to enact this moratorium

The premise behind our legislation is rather simple: The ending of the cold war has reversed the arms race. There is no need to develop new nuclear weapons. People will certainly argue over the need for such weapons at all. But no one can, in my view, assert that the United States will be unable to maintain national security if the Nation's testing program is halted. To the contrary, I am convinced that our security in the new world order can only be assured by the decision to suspend all nuclear testing.

President Bush's former arms control negotiator Richard Burt noted recently that "I think the time has come for us to seriously look at [a comprehensive test ban]. If the United States and the Soviet Union stopped testing nuclear weapons, it is going to be that much more difficult for small countries in the Third World to do that."

Mr. Burt has captured the real argument for a test ban: The threat has changed. We cannot allow ourselves to be preoccupied with a Soviet threat which has all but dissolved while ignoring the fact that the gravest danger now lies with the prospect of nuclear proliferation. The United States can recognize this threat and address it not only by implementing the bill introduced by Senator MITCHELL and myself, but by also working vigorously to enact a comprehensive test ban treaty.

Detractors will no doubt argue that a test ban places our nuclear stockpile at risk by prohibiting tests which verify safety. Yet, in a report to Congress last summer, a physicist at Lawrence Livermore National Laboratories asserted that the safety of our nuclear stockpile need not limit U.S. consideration of a test ban. The retirement of older weapons as well as tactical weapons have made this possible. In addition, precautions regarding the handling and transporting of nuclear weapons can provide a measure of safety in lieu of testing.

If then, we have largely ended the nuclear arms race and identified alternatives to testing, I challenge my colleagues to justify to the American taxpayer the continuation of a program which costs an average of $160 million per test. I urge the Congress to adopt the Nuclear Testing Moratorium Act in the spirit of the arms control initiatives announced by Presidents Bush and Gorbachev early this fall.

Mr. MITCHELL. Mr. President, I am pleased to join the distinguished Senator from Oregon [Mr. HATFIELD] and my other distinguished colleagues in introducing this legislation to implement a mutual moratorium on nuclear testing.

I believe it is important to sustain the momentum created by the recent unilateral arms control initiatives taken by President Bush and President Gorbachev. This legislation, by taking up the Soviet offer to temporarily halt nuclear testing, is another step toward building a more peaceful new world order.

President Gorbachev has offered to observe a 1-year testing moratorium as part of an effort to move the two countries toward a comprehensive test ban.

Up until President Bush assumed office, it had long been U.S. policy to pursue an end to all nuclear testing.

Our commitment to end nuclear testing was related to our institution of the nonproliferation regime. In exchange for other countries agreeing not to acquire nuclear weapons, we agreed to try to eliminate their role in our defense. Even President Reagan expressed to Congress his commitment to immediate negotiations on a step-by-step program to limit and end nuclear testing.

Unfortunately, the Bush administration has taken a giant step backward. This administration has called for a "period of implementation" of the Peaceful Nuclear Explosions and Threshold Test Ban Treaties before negotiating additional testing limits.

The rationale the President uses is that we must continue testing as long as we have nuclear weapons. Yet we can test the reliability of nuclear weapons without exploding warheads.

The real reason to conduct new tests is to develop new types of more lethal nuclear weapons, but we don't need such new nuclear weapons. Already this year, the administration has conducted 7 nuclear tests at a cost of between $10 million and $100 million per test. This does not seem to reflect the end of the cold war and the emergence of a new world order.

It fails to acknowledge that the relevance of nuclear weapons to our society has declined dramatically. This administration has not sought a comprehensive nuclear test ban despite the fact that the Soviet Union has periodically halted its own nuclear tests.

President Bush has declined to explore further limits despite the fact that he has initiated a new phase of arms control in which progress can be achieved outside of the legal framework of a formal treaty. That is why we are introducing this bill today

It is a very simple bill. It says that for 1 year, the United States will refrain from exploding any nuclear weapons as long as the Soviet Union, the Soviet Republics, or their successor states do the same. But if they do explode a nuclear device, the United States is free do so. I commend the senior Senator from Oregon for his leadership on this issue and I look forward to continuing to work together on issues of such vital concern. I am confident that we all want to help the new world order become a reality to see more rapid and meaningful progress toward disarmament.

We all want to help end nuclear proliferation. We all want a cleaner environment, free of radioactive waste. We all want to save money.

With the arms race ending between both the United States and the Soviet Union making deep reductions in nuclear and conventional weapons, it is the time to take the additional step

teeing that TCI would, in essence, be granted a lifetime monopoly franchise. When the company's covert activities failed, it reportedly spent $144,000 to run the mayor and an incumbent councilman out of office. The incumbents, as is the case with most local campaigns, had only a few hundred dollars to spend against $144,000 spent by this cable industry giant. But the people of Morganton were not fooled. Both of these individuals were reelected, and now TCI has shifted its tactics and is busy filing lawsuits to stop the city from building its own cable network.

Mr. President, I ask unanimous consent that at the conclusion of my remarks this Wall Street Journal article called "Cable Cabal" be printed in the RECORD.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GORE. Mr. President, this is simply not a case of a natural monopoly developing out of economic realities in the local marketplace. No, this is a monopoly of a different kind. This is a legislatively created monopoly, born out of a Government-forced compulsory license to take local television programming for free and give it an overdose of anticompetitive proposals in the 1984 Cable Act.

This monopoly is manifested in so many cases that it is virtually impossible to keep up with alarming new rates and service developments.

One of the industry's favorite ways to jack up cable rates while making it appear that rate increases are modest is to suddenly introduce some brand new charge. For example, they will all of a sudden say you have to start paying us for the converter boxes or you have to pay us for the remote control device, or if you hook up the same service in a second room, you have to pay us an arm and a leg for that, or we have some other brand new charge that we are going to add on to the basic charge.

Indeed, some of the most outrageous developments arise from the industry's apparent determination to move as much programming as possible to a pay-per-view basis so that what used to be basic programming that came with the monthly rate, all of a sudden anything that is especially popular that people really want to watch is on a pay per view basis. That is the trend. That is the direction they are heading in at full speed. And to add insult to consumer injury, cable operators would render the current generation of cable-ready televisions and VCR's obsolete by scrambling local signals and requiring consumers to rent a converter box to receive cable signals. Try that one on for size. The cable-ready televisions that the industry has produced.

The industry does not like that idea because they can make more money by rendering the cable-ready feature obsolete and charging a new charge to put a converter box on top of the cable-ready television, another new charge.

I am pleased that our colleague, Senator LEAHY, has addressed this issue and may offer a floor amendment to specifically outlaw that practice.

But make no mistake about it, Mr. President, if we do not act on this floor, if we do not pass this legislation, the abuses that I have been describing that our constituents have been suffering through are only the beginning because, if this industry is not held accountable, they will not, of their own initiative, show the self-discipline to start giving the consumers a break.

If we leave them in this situation where they have no competition and nobody who can hold them accountable in any way shape, or form, they will continue raising rates, continue coming up with new gimmicks to charge another arm and a leg and new ways to abuse the monopoly power that they have. Just count on it, unless we pass this legislation.

Our colleagues are fully aware of one recent notorious practice called retiering. That is a fancy word within the industry to discribe a recent cable practice which surely must have earned its industry inventor a huge bonus from corporate headquarters in Denver.

Retiering works like this: First, the cable operator who once offered a package of basic services, including local over-the-air free TV channels and typically 20 or so cable services like ESPN, MTV, USA, CNN, so on, essentialy what we have all come to know as baisc cable for average prices that was $17 a month—it varies widely across the country, but that has been the average price—but under retiering, the cable operator, worried about potential new controls on basic rate hikes, divides his current offering into a package of mostly free television channels provided by broadcasters, provided free under law, which he then charges people for, about $10 a month, and calls that basic cable; obviously, a service that only a minimum number of people want because all it includes is stuff that is available over the air anyway. In some areas where they have trouble getting a clear signal, they take those basic channels and charge much more, whatever the market will bear. That is the only tier that might potentially be regulated under the FCC rule. So this is how the scheme of retiering begins.

But here is the next step. The cable operators then creates a new expanded basic package which includes the same mostly free TV channels plus the other 20-plus channels that his subscribers really want from cable and charges $20 essentially for the exact same product but with a hefty increase compared to what was charged for the same thing before the retiering. A little sleight of hand going on there. A lot of sleight of hand going on there, taking it out of the consumers' pockets.

So in a brilliant exploitation of monopoly pricing power and loopholes the cable operator has in one swift stroke of the corporate pen avoided what minimal regulation the FCC wants in the minority of places and created a new cash-flow at the same time.

Unless my colleagues suspect that this scenario is simply hypothetical talk, I would like to print in the RECORD an article which also appeared in the Wall Street Journal, this one 2 weeks ago, entitled "Cable-TV Firms' Higher-Priced 'Tiers' Brings Cries Of Outrage From Consumers." It was dated January 15, 1992. I ask unanimous consent that be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Jan. 15 1992]

CABLE-TV FIRMS' HIGHER-PRICED 'TIERS' BRING CRIES OF OUTRAGE FROM CONSUMERS

(By Mark Robichaux)

NEW YORK.—For the nation's cable-television operators, getting down to basics often seems something best avoided.

Keenly aware of reregulation threats and new federal rules that let more cities cap basic cable rates, cable systems have simply redefined what "basic" supposedly means. They have carved out a layer of popular channels to form a new "tier" that costs extra—and thus they effectively dodge the rules aimed at curbing price increases for basic cable.

The practice of "tiering" wasn't prevalent in late 1989, when Congress first threatened to impose new regulations on cable, just three years after it had largely deregulated the industry. But tiering had spread to almost 60% of all cable subscribers by the middle of last year. It is likely to expand even further this year.

CONSUMER COMPLAINTS

Consumer groups call it a shell game that has let cable companies blithely slap on unfair rate increases. In the past few months alone, the cable system in Los Angeles imposed a 12% increase on its most popular package, and the system here in Manhattan similarly set a 10% increase. Last March, Time Warner Inc.'s Brooklyn system formed a new tier that included MTV and CNN; nine months later, it raised the charge for the tier by 34%.

"Cash flow is the name of the game for these companies," says lawyer Nicholas Miller, who represents several cities in disputes with cable systems. "Their main concern is how do we frustrate, confuse, divide or slow down an attempt to regulate the rates."

Almost all of the nation's biggest cable companies now use tiering. They maintain that it more fairly spreads the costs of various channels among the viewers who really want them, that it lets them lower the price of pared-down basic cable and reach viewers who merely want better reception and the low-income people who otherwise couldn't afford cable. Criticism of tiering "is pure cable-bashing that is totally unjustified," says Richard Aurelio, president of Time Warner's New York cable group.

Many cable operators, however, don't [illegible] customers that a cheaper basic opt[illegible]